

CIVIL COVER SHEET

APPENDIX H

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS DIANA MILLER

DEFENDANTS NATIONAL CREDIT AUDIT CORPORATION

(b) County of Residence of First Listed Plaintiff BURLINGTON
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number) Cary L. Flitter, Esq., and Theodore E. Lorenz, Esq., Flitter Lorenz, P.C., 450 N. Narberth Avenue, Suite 101, Narberth, PA 19072, (610) 822-0782

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|--|---|----------------------------|----------------------------|
| PTF | DEF | PTF | DEF |
| Citizen of This State <input type="checkbox"/> 1 | <input type="checkbox"/> 1 Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State <input type="checkbox"/> 2 | <input type="checkbox"/> 2 Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 | <input type="checkbox"/> 3 Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened

Transferred from ☐ 5 another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause: FDCPA 15 USC § 1692

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint
JURY DEMAND: ☒ Yes ☐ No.

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE

DOCKET NUMBER

DATE 12/4/13 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

DIANA MILLER
P.O. Box 2151
Vincentown, NJ 08088

Plaintiff

NO.

vs.

NATIONAL CREDIT AUDIT
CORPORATION
8512 Allen Road
Peoria, IL 61615

Defendant

COMPLAINT

I. INTRODUCTION

1. This is an action for damages brought by a consumer pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. §1692 (“FDCPA”).

2. The FDCPA prohibits collectors from engaging in deceptive and unfair practices in the collection of consumer debt.

3. Defendant is subject to strict liability for sending a collection letter which violates the provisions of the FDCPA.

II. JURISDICTION

4. Jurisdiction arises under 15 U.S.C. §1692k and 28 U.S.C. §1337.

III. PARTIES

5. Plaintiff is Diana Miller. She is a consumer who resides in Vincentown, New Jersey.

6. Defendant is National Credit Audit Corporation, a debt collection firm with a mailing address as captioned (hereinafter referred to as “NCAC”).

7. NCAC regularly engages in the collection of consumer debts using the mails and telephone.

8. NCAC regularly attempts to collect consumer debts alleged to be due another.

9. NCAC is a “debt collector” as that term is contemplated in the FDCPA, 15 U.S.C. §1692a(6).

IV. STATEMENT OF CLAIM

10. On or about March 18, 2013, defendant NCAC sent Plaintiff a collection notice seeking to collect an alleged consumer debt. A copy of the collection notice is appended hereto as Exhibit “A”(appropriately redacted for privacy per Fed. R. Civ. P. 5.2).

11. The March 18, 2013 letter was sent about one month after NCAC’s initial communication to Ms. Miller, which set forth the validation rights notice mandated by the FDCPA at 15 U.S.C. § 1692g.

12. Section 1692g of the FDCPA provides consumers with an informal dispute mechanism by which the consumer can seek verification and validation of an alleged debt.

13. In its March 18, 2013 letter, Defendant states: “Unfortunately, you have failed to respond in a timely manner. As a consequence, we are now legally entitled to assume that you acknowledge the debt but are refusing to pay voluntarily.” (Ex. “A”).

14. Defendant’s statement in its March 18 , 2013 letter that plaintiff’s failure to dispute the debt allows Defendant to “assume that you acknowledge the debt but are refusing to pay voluntarily” is a false, deceptive and misleading statement in violation of the FDCPA. 15 U.S.C. §1692e and §1692e(10).

15. Under the FDCPA, if a consumer does not dispute the validity of a debt, a debt collector can only assume the debt is valid for the purpose of proceeding with collection activity. 15 U.S.C. §1692g(a)(3).

16. The word “acknowledge” has a legal meaning in New Jersey which takes on particular significance in the context of debt collections; the act of “acknowledging” a debt can potentially toll the statute of limitations.

17. The failure of a consumer to dispute a debt does not “acknowledge” the alleged debt or create an indisputable legal obligation. A consumer can dispute the validity of an alleged debt at any time.

18. Failure to dispute a debt has no legal effect on a debtor’s rights.

19. Pursuant to §1692g(c) of the FDCPA, “the failure of the consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.”

20. The least sophisticated consumer may be confused that inaction has led to some legal “acknowledgment”, when that is not the case.

COUNT I - FAIR DEBT COLLECTION PRACTICES ACT

21. Plaintiff repeats the allegations contained above as if the same were here set forth at length.

22. Defendant has violated the Fair Debt Collection Practices Act by sending a false, deceptive, and misleading communication in violation of 15 U.S.C. §1692e and §1692e(10).

WHEREFORE, Plaintiff Diana Miller demands judgment against defendant National Credit Audit Corp. for:

- (a) Damages;
- (b) Attorney's fees and costs; and
- (c) Such other and further relief as the Court shall deem just and proper.


V. DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all issues so triable.

Date: _____

12/4/13

Respectfully submitted:



CARY L. FLITTER
THEODORE E. LORENZ
ANDREW M. MILZ
Attorneys for Plaintiff

FLITTER LORENZ, P.C.
525 Rt. 73 South, Ste. 200
Marlton, NJ 08053
856-396-0600

EXHIBIT “A”



National Credit Audit Corporation
P.O. Box 515489, Dallas, TX 75251-5489

March 18, 2013

Diana Miller
772 WESTMINSTER DR N
SOUTHAMPTON, NJ 08088-1129

RE: Easthampton

L22

File # [REDACTED] 33

Balance [REDACTED]

Dear Diana Miller,

We have corresponded with you previously, concerning the above referenced account.

Unfortunately, you have failed to respond in a timely manner. As a consequence, we are now legally entitled to assume that you acknowledge the debt but are refusing to pay voluntarily.

My client expects me to pursue all available legal remedies to effect collection of your account. I urge you to make additional collection efforts unnecessary by remitting the balance or contacting me immediately to discuss payment options. Our payment address is **NCAC, P.O. Box 7247-7437, Philadelphia, PA 19170-7437**. For your convenience, we can accept at no additional cost, checks by phone, Western Union Quick Collect, credit and debit cards. Please call today or visit our website at **payncac.com** for account information and payment options.

Further procrastination on your part will only result in greater expense as well as other undesirable consequences. Act now to protect your credit. I will allow 7 days for your response.

Sincerely,

Rosalinda Garcia Ext: 4418
469-621-0464
800 779-4894

This is an attempt to collect a debt. Any information obtained will be used for that purpose.